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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Equal Access and Interconnection)
Obligations Pertaining to)
Commercial Mobile Radio Services)

CC Docket No. 94-54
RM-8012

To: The Commission

COMMENTS OF PALMER COMMUNICATIONS INCORPORATED

Palmer Communications Incorporated ("Palmer"), by its attorneys and pursuant to Rule Section 1.415, submits its Comments on the Commission's notice of proposed rule making and notice of inquiry, which proposes, among other things, imposition of equal access obligations upon commercial mobile radio service ("CMRS") providers.¹ In support, the following is shown:

I. Introduction.

1. Palmer and its affiliates are diversified communications providers in the broadcast, common carrier and specialized mobile radio ("SMR") services. Specifically, Palmer holds a number of cellular licenses in the Southeastern United States. The Commission's proposals would thus have a direct adverse impact on Palmer's cellular operations and more importantly, its customers. Palmer strongly disagrees with the Commission's tentative conclusion that cellular providers should be subjected to equal access obligations, and believes that such action would be contrary to the public interest.

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¹ Notice of Proposed Rule Making and Notice of Inquiry, CC Docket No. 94-54 (July 1, 1994) ("NPRM").

II. Imposing Equal Access Upon Cellular Providers Is Not Supported by Public Policy or Historical Justifications.

2. The Commission appears to desire to impose equal access obligations on cellular carriers out of a view that such obligations are somehow required in the interest of regulatory parity. NPRM at ¶ 3. That is a mistaken view. Regulatory parity is concerned with treating similar classes of carriers similarly. Equal access arose from the antitrust case which broke up the Bell System.² The evidence before the court in that proceeding persuasively demonstrated that AT&T and the Bell operating companies had used their monopoly control over local exchange service to disadvantage long distance providers seeking to compete with AT&T's long distance service. Equal access (i.e. the obligation to provide subscribers equal access to the interexchange carrier ("IXC") of their choice) was imposed on the former Regional Bell Operating Companies ("RBOCs") to redress the harm previously visited on IXC who had suffered discriminatory treatment by the Bell System. Thus, only those cellular affiliates of the former RBOCs are required to provide equal access to IXCs. Cellular carriers not affiliated with RBOCs did not have equal access obligations imposed on them because they did not have the history of anticompetitive conduct shared by the RBOCs. That has not changed.

3. The MFJ did not set out an overarching regulatory framework based on public policy considerations applicable to the

² United States v. AT&T, 552 F.Supp. 131, (D.D.C. 1982), aff'd sub nom Maryland v. U.S., 460 U.S. 1001 (1983).

entire telecommunications industry. It instead represents merely a consent decree voluntarily entered into by the Department of Justice and AT&T, settling specific instances of past anticompetitive behavior. There is no reason for the Commission now to impose the MFJ's requirements on other parties out of concerns of regulatory parity. To say it simply, independent cellular operators are not similarly situated to RBOC affiliated cellular carriers.

4. Palmer agrees with the doubts recently expressed by Commissioner James H. Quello whether the Commission should impose a ubiquitous regulatory structure based on the MFJ.³ As Commissioner Quello made clear, the MFJ was a product of "a vastly different market structure" than today's dynamic, competitive cellular/wireless market; "we should be asking how a competitive market for mobile communications will allow us to remove regulatory impediments rather than grafting regulatory stop-gap measures upon a family of services yet to be developed and offered by competitors to the public."⁴

5. Simply stated, the justifications for the MFJ are not applicable to non-RBOC affiliated cellular providers who do not directly control or are not affiliated with entities that control local exchange facilities. Today's cellular/wireless market provides many sources of access to wireline local exchange

³ See Separate Statement of Commissioner James H. Quello, Notice of Proposed Rule Making and Notice of Inquiry, CC Docket No. 94-54 (July 1, 1994).

⁴ Id.

networks, a situation in direct contrast to the particular market situation on which the MFJ was predicated. As Commissioner Andrew C. Barrett points out, the "rationale for imposing equal access obligations in the context of "bottleneck facility" market power is not apparent here."⁵ Since the MFJ was based on a situation in which local exchange carriers were the IXC's only source of access, and since that situation does not exist in the competitive arena of commercial mobile service, imposition of equal access obligations on CMRS providers is not appropriate.

III. Subjecting Cellular Providers to Equal Access Obligations Imposes Unjustified Costs to Operators and Subscribers.

6. The Commission apparently sees as one of the primary benefits of imposing equal access obligations on cellular providers the potential lowering of the price of the long distance service originating or terminating on cellular providers' systems. NPRM at ¶ 36. Unfortunately, imposing such obligations on cellular providers will inevitably, have the opposite effect, as the costs of providing equal access necessarily will be passed on to subscribers while denying those subscribers substantial benefits.

7. The costs of implementing equal access include not only the administrative expenses of conducting a program of presubscription and consumer education, but also the more significant expense of converting existing switches and switching software to allow for customer choice of IXCs or purchasing new and

⁵ Separate Statement of Commissioner Andrew C. Barrett, Notice of Proposed Rule Making and Notice of Inquiry, CC Docket No. 94-54 (July 1, 1994).

expensive equipment. The financial burden of implementing and maintaining new equipment and IXC software will be significant, and for many independent cellular providers, crushing.

8. As the Commission concedes, the costs of implementing equal access may be so high that it could force some smaller carriers out of the market. NPRM at ¶ 34. In fact, most independent cellular providers lack the financial resources to absorb the cost of implementing and maintaining IXC access. Such consequences would invariably reduce competition by eliminating independent providers from the marketplace.

9. Palmer and other independent cellular service providers currently obtain interchange service at bulk discounted rates from IXCs, which in turn, allows them to offer long distance service to their subscribers at discounted rates. In addition, many cellular providers have instituted wide area service with little or no extra charge for expanded calling areas. If these carriers are forced to implement equal access, their customers will be denied the benefits of wide area service or the lower rates available from bulk discounting.

10. For example, Palmer has negotiated interconnection arrangement which allow for LATA Wide Toll-Free Calling Areas. However, several independent local exchange carriers do not participate in this arrangement. With respect to those carriers, Palmer absorbs the cost of long distance charges from these independent telephone companies, thereby offering complete toll-free dialing to its cellular subscribers within the LATA.

11. Likewise, Palmer participates in the North American Cellular Network, which allows it to forward calls to its subscribers which may be roaming on the other some 500 participating cellular carriers' systems. Palmer currently forwards such calls to other markets and absorbs the cost of the long distance charges incurred from its IXC. The bulk minutes discount offered by Palmer's IXC under this arrangement allows Palmer to provide this call delivery service at no charge to its cellular subscribers.

12. Forcing Palmer to provide equal access will raise the overall IXC charges to its subscribers in providing these valuable network features, and make it no longer cost effective for Palmer to provide these services. Such a result serves no public interest purpose.

IV. Equal Access Obligations Will Stunt the Development of an Independent Cellular Industry.

13. Equal access will discourage investment in seamless wide-area cellular systems, create disincentives for further improvements, and hamper cellular operators' ability to compete against other wireless service providers to meet end-to-end communications needs of mobile users. In keeping with recent pronouncements surrounding the administration's and the Commission's commitment to infrastructure buildout and streamlined regulation, the FCC should afford cellular carriers the maximum marketplace flexibility to adapt and upgrade their networks to meet emerging wireless competition rather than impose unnecessary regulation on them.

14. In fact, imposing increased regulatory burdens on cellular carriers contradicts the Commission's determination of Congress' objectives in amending Section 332 of the Communications Act, which was to impose "a reasonable level of regulation for CMRS providers, and to avoid unwarranted regulatory burdens for any mobile radio licensees classified as CMRS providers." NPRM at ¶ 2. The Commission itself states as one of its goals in the CMRS Second Report⁶ to establish a regulatory structure that will foster competition while promoting the "efficient provision of service to consumers at reasonable prices." NPRM at ¶ 31. Unless there is some countervailing benefit, increased regulatory burdens ultimately harm the subscriber. As Palmer demonstrates below, there is no countervailing benefit to the subscriber from equal access.

V. Imposition of Equal Access Is Not Supported by Any Definite, or Desired, Benefits to Consumers.

15. The Commission tentatively concludes that "the provision of equal access by cellular providers will produce substantial public interest benefits in the cellular services market by promoting customer choice." NPRM at ¶ 42. The Commission cites no empirical evidence that consumers desire equal access or such choice. In fact, as the Commission notes, some commenting parties in a prior proceeding, pointed out, "customers are more concerned with cellular service features, including coverage area, the

⁶ Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, Gen. Docket No. 93-252, 9 FCC Rcd 1411, 1448-1463, 1508 (1994) ("CMRS Second Report").

ability to roam on other systems, high [signal quality] and a reasonable total monthly bill." NPRM at ¶ 25.⁷ That is certainly Palmer's experience.

16. In this connection, the Commission must consider that unlike the situation with local exchange service, CMRS even now is a competitive service, and promises substantially increased competition in the near future with the advent of PCS and the development of Enhanced SMR service. One area in which these competing CMRS providers will compete is in the area of interexchange service. It may very well be that the public will value the choice of an IXC over the competing benefits CMRS carriers now offer. But that would be a decision such subscribers would make by their choice of CMRS carrier. For the Commission to make that choice for them now would deny them a more fundamental opportunity for a meaningful choice between CMRS carriers offering diverse communications services.

16. As Palmer has shown above, instead of resulting in subscriber savings, the ultimate effect of imposing equal access on cellular providers will be to increase their costs. In addition, such action would serve only to enrich large IXCs like AT&T, MCI and Sprint, the very parties behind the push for equal access, at the expense of independent cellular providers. The public interest would be disserved by crippling independent cellular providers

⁷ Citing Opposing Group Comments on MCI Telecommunications Corporation, Policies and Rules Pertaining to Equal Access Obligations of Cellular Licensees, Petition for Rule Making, Filed June 2, 1992 ("MCI Petition") at 4-5.

financially, thereby decreasing their opportunity and ability to invest in upgrading their networks. Such a result would be particularly unjustified because it would universally impose on innocent independent cellular providers a specific remedy justified by the RBOCs' past history of anticompetitive behavior.

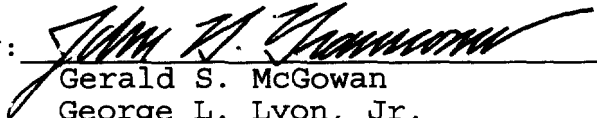
VI. Conclusion

3. As Palmer has shown above, no justification exists for imposing a specific MFJ remedy of equal access on independent, non-RBOC cellular providers. Today's independent cellular providers, which participate in a competitive cellular/wireless market, do not pose the anticompetitive problems underpinning the rationale for the imposition of equal access. The costs of imposing equal access will create serious financial strain on cellular providers and may deprive consumers of the benefits of bulk purchasing discounts with IXC providers and similar cost savings arrangements. Increased regulation will stifle investment and innovation in the dynamic cellular/wireless market despite the lack of evidence of any mandate from the public for this type of equal access obligation. The Commission should abandon its tentative proposal to impose

equal access obligations on cellular providers, and instead allow the competitive marketplace to dictate the type (and costs) of services that consumers desire.

Respectfully submitted,

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September 12, 1994

CERTIFICATE OF SERVICE

I, Cheri Skewis, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 12th day of September, 1994, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Comments to the following:

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